



December 1, 2006

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Ms. Marlene H. Dortch
Secretary
Office of the Secretary
Federal Communications Commission
445 12th Street, S.W.
Washington, D.C. 20554

Ex Parte Submission

Re: AT&T Inc. and BellSouth Corporation Applications for Approval of
Transfer of Control – WC Docket No. 06-74.

Dear Ms. Dortch:

On behalf of the AdHoc Telecommunications Users Committee (“AdHoc” or “Committee”), please enter into the record of the proceeding captioned above the attached study by the Government Accountability Office, *FCC Needs to Improve Its Ability to Monitor and Determine the Extent of Competition in Dedicated Access Services*, Report No. GAO-07-80 (Washington DC: November 2006) (“*GAO Study*”).

The *GAO Study* confirms what AdHoc and other parties have been reporting to the Commission for the past several years -- competitive alternatives to ILEC special access services simply do not exist at the vast majority of commercial locations where enterprise customers require those services.¹ As a result, the Bell Operating Companies’ (“BOCs”) have raised their prices in areas where the FCC has de-regulated pricing. The *GAO Study* concludes, consistent with the analyses provided to the FCC by the Committee in this proceeding² and

¹ AdHoc first raised the alarm over four years ago regarding the BOCs’ rate increases and the lack of competitive alternatives in pricing flexibility areas. See Comments of AdHoc Telecommunications Users Committee (Jan. 22, 2002) at 2-3, *filed in Performance Measurements and Standards for Interstate Special Access Services*, CC Docket Nos. 01-321, 00-51, 98-147, 96-98, 98-141, 96-149, 00-229, Notice of Proposed Rulemaking, 16 FCC Rcd 20896 (2001).

² See Reply Comments of AdHoc Telecommunications Users Committee (June 20, 2006)



in many others,³ that prices for special access services in areas subject to the Commission's Phase II pricing flexibility rules are higher than they would have been had those prices remained subject to some form of FCC price regulation. The *Study* thus confirms that the level of competition for special access services is simply not sufficient to constrain the BOCs market power relative to those services.

The GAO's specific findings relevant to the issues raised by AdHoc in this proceeding are the following:

- Even in the DS1 service markets where the FCC has granted pricing flexibility, because these markets are supposedly among the most competitive markets in the country, purchasers of special access service had *no option other than the BOC in at least 94% of buildings* in the market.⁴
- The *GAO Study* indicates that the *prices for special access services in MSAs where full pricing flexibility has been granted are higher* than the prices in other areas,⁵ demonstrating once again that the Commission has prematurely de-regulated special access services under its pricing flexibility rules.
- Contrary to representations by the BOCs, the *GAO Study's* analysis of the BOCs' average revenue for DS1 and DS3 services indicates that, even after accounting for volume and term plans and "contract tariffs", average *revenues were higher by a statistically significant amount in MSAs in which full phase II pricing flexibility had been granted* than in either Phase I or price-caps regulated MSAs.⁶
- The *GAO Study* faults the data used by the FCC to evaluate the level of competition for special access services, indicating that the *FCC did not gather, maintain, or review data sufficient to evaluate competition* for

and Attachments A and B thereto.

³ *Id.* at n.21.

⁴ GAO Report at 19 – 23.

⁵ GAO Report at 27 – 28. Although the GAO's pricing analysis was based upon the "list prices" for these services, they found, as has AdHoc in the past, that since most of the volume and term discount plans worked off of the "list prices", the impact of higher list prices in price flex areas flowed through to even those customers that had signed volume and term contract plans.

⁶ GAO Report at 32 – 34.



special access services, and that the data used by the Commission was not “current, specific or reliable.”⁷

- The *GAO Study* questions whether any basis exists for the Commission’s presumption that viable competitive alternatives sufficient to constrain BOC market power in special access markets will develop, noting that the analysis in the Report “suggests that **wireline facilities-based competition may not be a realistic goal** for some segments of the market for dedicated access.”⁸

Before releasing the report, GAO gave the incumbent carriers an opportunity to review and comment upon a draft. Apparently unable to refute the GAO’s analysis of the marketplace conditions for DS-1 services, the incumbents instead suggested that the GAO should have defined the special access product market as beginning at the “DS-3” level of demand instead.⁹ The only reasonable reading of this response is as an admission by the ILECs that competitive alternatives do not exist for the DS-1 market.

The market conditions revealed by the *GAO Study* are highly relevant to the instant proceeding. They demonstrate (again) that the merger would not serve the public interest unless the Commission imposes conditions to protect competition and customers from the BOCs’ market power over special access services. The necessary conditions were described in greater detail in the September 22, 2006 *ex parte* filing by COMPTTEL, Ad Hoc, Mobile Satellite Ventures, and Time Warner Telecom in this docket.

Pursuant to Section 1.1206(b) of the Commission’s Rules, 47 C.F.R. § 1.1206(b), this letter is being filed with the Office of the Secretary.

Sincerely,



Attachment

⁷ GAO Report at 38 – 41.

⁸ GAO Report at 42.

⁹ GAO Report at 46.